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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,179	12/13/2000	Tahir Sadik Khan	LIFE-016	8410

7590

06/19/2003

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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 06/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,179

Applicant(s)

KHAN ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-11, 13, 14, 16, 19-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13, 14, 16, 19-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 9-11, 13-14, 16, 19-21 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kloefer in view of either Henschen et al. or Gargan.

Kloefer teaches making a blood test strip that can detect glucose (see col. 11 line 44). Figure 11 demonstrates how the test strips are cut out of a precursor comprising an elongated support material. Kloefer is silent to the claimed interdigitating pattern of the precursor on the test strip.

Henschen et al. teaches in column 9 lines 4+ that two interdigitated rows of electrodes are advantageous because it save the amount of metal required when compared to a single row of terminals.

Gargan teaches in column 4 lines 10+ teach a stamped interdigitating pattern takes up less material because less material is wasted and therefore would have a lower production cost.

It would have been within the skill of the art to modify Kloefer in view of Henschen et al. or Gargan and use an interdigitating pattern when outlining the test devices on the precursor to gain the above advantages of requiring less material and a lower production cost.

The modified method of Kloefer is silent to the claimed aspect ratio of 0.5 and a lance.

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The court decided In re Boesch 205 USPQ 215 that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well-known results. The relative dimension of the test device are a result effective variable based upon the desired application and marketing requirements. Also, the use of a standard solution and a lance for drawing a blood sample are result effective variable having the expected and well known function of providing standardization and drawing blood.

It would have been within the skill of the art to further modify Kloefer to have a sample application region with an aspect ratio of 0.5 as optimization of a result effective variable based upon the desired application and marketing specifications. Additionally, one would further modify Kloefer and supply a standard solution and lance to gain the advantage of having means to standardize and draw a blood sample as optimization of a result effective variable.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kloefer
Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kloefer in view of Henschen et al. or Gargan as applied to claims 1-7,9-11,13-14,16,19-21,23 and 25-27 above, and further in view of Garcia et al.

Kloefer in view of Henschen et al. or Gargan is silent to the claimed lance.

Garcia et al. teach it is desirable to supply a lance with a blood test kit so that a sample can be safely and comfortably drawn.

It would have been within the skill of the art to further modify Kloefer in view of Garcia et al. and supply a lance to gain the above advantages.

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R s p o n s t o A r g u m n t s

Applicant's arguments with respect to claims 1-7,9-11,13-14,16,19-21 and 23-27 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander
Primary Examiner
Art Unit 1743

June 16, 2003